



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2015-0224; FRL-9939-16-OAR]

California State Nonroad Engine Pollution Control Standards; In-Use Diesel-Fueled Transport Refrigeration Units (TRUs) and TRU Generator Sets and Facilities Where TRUs Operate; Request for Within-the-Scope and Full Authorization; Opportunity for Public Hearing and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The California Air Resources Board (CARB) has notified the Environmental Protection Agency (EPA) that it has adopted amendments to its In-Use Diesel-Fueled Transport Refrigeration Units (TRUs) and TRU Generator Sets and Facilities Where TRUs Operate (together “2011 TRU Amendments”) regulation. By letter dated March 2, 2015, CARB asked that EPA authorize these amendments pursuant to section 209(e) of the Clean Air Act. CARB seeks confirmation that certain 2011 TRU Amendments are within the scope of prior authorizations issued by EPA, or, in the alternative, that such amendments merit full authorization. CARB also seeks a full authorization for other 2011 TRU Amendments. This notice announces that EPA has tentatively scheduled a public hearing to consider California’s authorization request for the 2011 TRU Amendments and that EPA is now accepting written comment on the request.

DATES: EPA has tentatively scheduled a public hearing concerning CARB’s request on January 6, 2016, at 10 a.m. ET. EPA will hold a hearing only if any party notifies EPA by December 15, 2015 to express interest in presenting the Agency with oral testimony. Parties wishing to present oral testimony at the public hearing should provide written

notice to David Dickinson at the email address noted below. If EPA receives a request for a public hearing, that hearing will be held at the William Jefferson Clinton Building (North), Room 5528 at 1200 Pennsylvania Ave, NW, Washington, DC 20460. If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and instead will consider CARB's request based on written submissions to the docket. Any party may submit written comments until February 8, 2016.

Any person who wishes to know whether a hearing will be held may call David Dickinson at (202) 343-9256 on or after December 16, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2015-0224, by one of the following methods:

- Online at <http://www.regulations.gov>: Follow the Online Instructions for Submitting Comments.
- Email: a-and-r-docket@epa.gov.
- Fax: (202) 566-9744.
- Mail: Air and Radiation Docket, Docket ID No. EPA-HQ-OAR-2015-0224, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Online Instructions for Submitting Comments: Direct your comments to Docket ID No. EPA-HQ-OAR-2015-0224. EPA's policy is that all comments we receive will be

included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. The <http://www.regulations.gov> website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <http://www.regulations.gov>, your email address will automatically be captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

EPA will make available for public inspection materials submitted by CARB, written comments received from any interested parties, and any testimony given at the public hearing. Materials relevant to this proceeding are contained in the Air and Radiation Docket and Information Center, maintained in Docket ID No. EPA-HQ-OAR-2015-0224. Publicly available docket materials are available either electronically through

<http://www.regulations.gov> or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue, NW, Washington, DC. The Public Reading Room is open to the public on all federal government work days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566-1744. The Air and Radiation Docket and Information Center's website is <http://www.epa.gov/oar/docket.html>. The electronic mail (email) address for the Air and Radiation Docket is: a-and-r-Docket@epa.gov, the telephone number is (202) 566-1742, and the fax number is (202) 566-9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system. You may access EPA dockets at <http://www.regulations.gov>. After opening the <http://www.regulations.gov> website, enter, in the "Enter Keyword or ID" fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information ("CBI") or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality also maintains a webpage that contains general information on its review of California waiver and authorization requests. Included on that page are links to prior waiver and authorization *Federal Register* notices. The page can be accessed at <http://www.epa.gov/otaq/cafr.htm>.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Attorney-Advisor,
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SUPPLEMENTARY INFORMATION:

I. California's TRU Regulations; Within-the-Scope Request and Request for Full Authorization

CARB's TRU regulations require TRU engines to meet in-use standards that vary by horsepower (hp) range and have two levels of emissions stringency (LETRU and ULETRU – low-emission and ultra-low emission transportation refrigeration units, respectively) that are phased in over time.¹ The 2011 Amendments provide owners of 2001 through 2003 model year (MY) TRU engines that complied with the LETRU in-use performance standards by specified compliance deadlines a one-year extension of the deadline to comply with the more stringent ULETRU in-use performance standards.² The 2011 Amendments also clarify manual recordkeeping requirements for electric standby-equipped TRUs and ultimately require automated electronic tracking system requirements for such TRUs; establish requirements for businesses that arrange, hire, contract, or dispatch the transport of goods in TRU-equipped trucks, trailers or

¹ CARB's amended regulation is codified at California Code of Regulations (CCR), title 13, section 2477. EPA granted California a full authorization for the initial TRU regulation in 2009 (74 FR 3030 (January 16, 2009)). EPA confirmed California's 2010 amendments were within the scope of the initial TRU authorization in 2013 (78 FR 38970 (June 28, 2013)).

² The 2011 TRU Amendments also provide an extension of applicable compliance dates should compliant technology not be available.

containers; and address other issues that arose during the initial implementation of the TRU regulation.³

By letter dated March 2, 2015, CARB submitted a request to EPA pursuant to section 209(e) of the Clean Air Act (CAA or the Act) for confirmation that its 2011 Amendments fall within the scope of EPA's previous authorizations, or, in the alternate, a full authorization for those amendments. Included in the within-the-scope request are the 2011 Amendments that (1) extend the ULETRU compliance date for MY 2003 and older TRUs that complied with the LETRU standard by specified dates; (2) extend compliance dates when compliant technology is unavailable or delayed for certain reasons; (3) establish new exemptions⁴; and (4) allow in-use performance standards and associated compliance deadlines to be based on the year the TRU was manufactured instead of the TRU engine model year. CARB also seeks within-the-scope confirmation that certain amendments to its accompanying enforcement procedures are within the scope of prior EPA authorizations.⁵ CARB seeks a full authorization for a subset of the 2011 Amendments that set forth requirements for repowering TRUs with new replacement engines and that allow owners to repower TRUs with rebuilt engines meeting certain requirements. CARB also seeks a full authorization for a series amendments to the TRU accompanying enforcement procedures.⁶

II. Clean Air Act Nonroad Engine and Vehicle Authorizations

³ For a complete description of CARB's amended TRU regulation and the provisions which CARB seeks EPA's authorization see CARB's incoming request to EPA (and accompanying documents) submitted to the public docket at EPA-HQ-OAR-2015-0224.

⁴ These new exemptions are listed in section II G of CARB's authorization request, EPA-HQ-OAR-2015-0224-0002 at p. 12-13.

⁵ These amendments to the TRU accompanying enforcement procedures are listed in CARB's authorization request, EPA-HQ-OAR-2015-0244-0002 at p. 24.

⁶ These amendments to the TRU accompanying enforcement procedures are listed in CARB's authorization request, EPA-HQ-OAR-2015-0224-0002 at p. 25.

Section 209(e)(1) of the CAA prohibits states and local governments from adopting or attempting to enforce any standard or requirement relating to the control of emissions from certain types of new nonroad vehicles or engines. The Act also preempts states from adopting and enforcing standards and other requirements related to the control of emissions from other types of new nonroad vehicles or engines as well as non-new nonroad engines or vehicles. Section 209(e)(2), however, requires the Administrator, after notice and opportunity for public hearing, to authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such preempted vehicles or engines if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. However, EPA shall not grant such authorization if it finds that (1) the determination of California is arbitrary and capricious; (2) California does not need such California standards to meet compelling and extraordinary conditions; or (3) California standards and accompanying enforcement procedures are not consistent with [CAA section 209].⁷ In addition, other states with air quality attainment plans may adopt and enforce such regulations if the standards and the implementation and enforcement procedures are identical to California's standards. On July 20, 1994, EPA promulgated a rule that sets forth, among other things, regulations providing the criteria, as found in

⁷ EPA's review of California regulations under section 209 is not a broad review of the reasonableness of the regulations or its compatibility with all other laws. Sections 209(b) and 209(e) of the Clean Air Act limit EPA's authority to deny California requests for waivers and authorizations to the three criteria listed therein. As a result, EPA has consistently refrained from denying California's requests for waivers and authorizations based on any other criteria. In instances where the U.S. Court of Appeals has reviewed EPA decisions declining to deny waiver requests based on criteria not found in section 209(b), the Court has upheld and agreed with EPA's determination. *See Motor and Equipment Manufacturers Ass'n v. Nichols*, 142 F.3d 449, 462–63, 466–67 (D.C. Cir.1998), *Motor and Equipment Manufacturers Ass'n v. EPA*, 627 F.2d 1095, 1111, 1114–20 (D.C. Cir. 1979). *See also* 78 FR 58090, 58120 (September 20, 2013).

section 209(e)(2), which EPA must consider before granting any California authorization request for new nonroad engine or vehicle emission standards.⁸ EPA revised these regulations in 1997.⁹ As stated in the preamble to the 1994 rule, EPA has historically interpreted the section 209(e)(2)(A)(iii) “consistency” inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).¹⁰

In order to be consistent with section 209(a), California’s nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California’s nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same “consistency” criteria that are applied to motor vehicle waiver requests. Pursuant to

⁸ 59 FR 36969 (July 20, 1994).

⁹ 62 FR 67733 (December 30, 1997). The applicable regulations, now in 40 CFR part 1074, subpart B, § 1074.105, provide:

(a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable federal standards.

(b) The authorization will not be granted if the Administrator finds that any of the following are true:

(1) California’s determination is arbitrary and capricious.

(2) California does not need such standards to meet compelling and extraordinary conditions.

(3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.

(c) In considering any request to authorize California to adopt or enforce standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

¹⁰ 59 FR 36969 (July 20, 1994).

section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California “standards and accompanying enforcement procedures are not consistent with [section 202(a)]” of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with section 202(a) if: (1) there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the federal and state testing procedures impose inconsistent certification requirements.¹¹

If California amends regulations that EPA has already authorized, California can seek EPA confirmation that the amendments are within the scope of the previous authorization. A within-the-scope confirmation, without a full authorization review, is permissible if three conditions are met.¹² First, the amended regulations must not undermine California’s determination that its standards, in the aggregate, are as protective of public health and welfare as applicable federal standards. Second, the amended regulations must not affect consistency with section 202(a) of the Act. Third, the amended regulations must not raise any “new issues” affecting EPA’s prior authorizations.

In considering whether to grant authorizations for accompanying enforcement procedures tied to standards for which an authorization has already been granted, EPA addresses questions as to whether the enforcement procedures undermine California’s determination that its standards are as protective of public health and welfare as

¹¹ *Id.* See also 78 FR 58090, 58092 (September 20, 2013).

¹² See 78 FR 38970, 38972 (June 28, 2013).

applicable federal standards, and whether the enforcement procedures are consistent with section 202(a).¹³

III. EPA's Request for Comments

As stated above, EPA is offering the opportunity for a public hearing, and is requesting written comment on issues relevant to a within-the-scope analysis and a full authorization analysis. Specifically, we request comment on whether the 2011 Amendments (1) undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable federal standards; (2) affect the consistency of California's requirements with section 209 of the Act; or (3) raise any other new issues affecting EPA's previous waiver or authorization determinations.

Should any party believe that the amendments are not within the scope of the previous authorizations, EPA also requests comment on whether the 2011 Amendments meet the criteria for a full authorization. Specifically, we request comment on: (a) whether CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious; (b) whether California needs such standards to meet compelling and extraordinary conditions; and (c) whether California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

IV. Procedures for Public Participation

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the

¹³ See CAA section 209(e)(2)(A)(i) and (iii), 42 U.S.C. 7543(e)(2)(A) (i) and (iii).

transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until February 8, 2016. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record from the public hearing, if any, all relevant written submissions, and other information that she deems pertinent. All information will be available for inspection at the EPA Air Docket No. EPA-HQ-OAR-2015-0224.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible and label it as "Confidential Business Information" (CBI). If a person making comments wants EPA to base its decision on a submission labeled as CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted to the public docket. To ensure that proprietary information is not inadvertently placed in the public docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed, and according to the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: November 9, 2015.

Christopher Grundler,
Director,
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Office of Air and Radiation.

[FR Doc. 2015-29368 Filed: 11/16/2015 8:45 am; Publication Date: 11/17/2015]